

APPENDIX C, JAXPORT, SPECIAL CONDITIONS

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SPECIAL CONDITIONS

The "Special Conditions" supplement and/or amend other contract documents as necessary for this project.

1. Time for Completion

The Contractor shall totally and finally complete all work no later than **One Hundred Twenty(120) calendar days after receipt of Notice to Proceed.**

2. Liquidated Damages

- a. The parties agree that at the time of entering into this Agreement the parties cannot determine the precise amount of damages that Jaxport will suffer in the event Contractor is unable to perform its obligations under this Agreement. The parties agree that the damages suffered by Jaxport under such circumstances are uncertain and difficult to ascertain. Therefore, the parties agree that this sum is fair and reasonable and represents liquidated damages and is not a penalty.
- b. Should the Contractor or, in case of its default, the Surety fail to complete the work within the time stipulated in the contract, or within such extra time as may have been granted by the Owner, the Contractor or, in case of its default, the Surety shall pay to the Owner not as a penalty but as Liquidated Damages the amount so due as determined below.
- c. For each calendar day that any part of the work remains uncompleted after the expiration of the contract time, the sum per day specified below shall be deducted by the Owner from monies due the Contractor, not as a penalty but as agreed Liquidated Damages representing loss to the Owner for additional cost of contract administration, inconvenience and additional cost of operations only due the Owner as a result of the Contractor's late completion. If no money is due the Contractor, the Owner shall have the right to recover said sum or sums from the Contractor, from the Contractor's Surety, or from both. The assessment of Liquidated Damages shall be in addition to actual damages or claims to the Owner except for inconvenience, administrative costs, and additional costs of operation.
- d. Liquidated Damages for failure to complete the work within the time specified for the completion of the work shall be:
\$ 966.00 per calendar day
- e. Permitting the Contractor to continue and to finish the work, or any part of it, after the expiration of the contract time allowed including extensions of time granted to the Contractor shall, in no way, act as a waiver on the part of the Owner, of the Liquidated Damages due under the contract.
- f. In case of default of the contract and the completion of the work by the Owner, the Contractor and its Surety shall be liable for the Liquidated Damages and delay under the contract, but no Liquidated Damages shall be chargeable for any delay in the final completion of the work by the Owner due to any unreasonable action or delay on the part of the Owner.

3. Warranty

The Contractor agrees to correct or replace any defective materials or workmanship for a period of **One (1) Year** from date of Substantial Completion. The Technical Specifications may require a longer warranty period for all or portions of the Work.

4. Permits

The Contractor shall secure permits and licenses for this project, if applicable.

The Contractor shall obtain the City Building Permit and any permits required for the construction of temporary structures, and temporary dredging and filling which may be necessary to facilitate its construction scheme and operations.

5. Owner's Minimum Project Work Rules

See FORM PWR

6. Existing Soil Conditions

The Owner has, for its own use, made borings at or near the site of the Work. Any boring data shown in these contract documents is presented only as information which indicates certain conditions found and limited to the exact locations and on the dates indicated. Any interpretations or conclusions drawn by the Contractor from such data shall be its own and the Owner makes no representation or guarantee concerning the accuracy or completeness of such data. The Contractor shall be responsible for making its own determination of subsurface conditions prior to bidding and shall not assume that any of the aforesaid boring data will necessarily be found or maintained.

7. Site Conditions

The Contractor shall visit the location of the Work and make such investigations of existing conditions above or below the surface of the ground as it may deem necessary for the proper and timely performance of its work, including but not limited to field measurements, soil investigations, laydown areas, interferences and general logistics. No oral representations by any persons regarding such conditions either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

8. Structure over Navigable Waters

Where structures are erected in, adjacent to, or over navigable waters, the Contractor shall observe all regulations and instructions of Federal and other authorities having control over such waters. The Contractor shall not obstruct navigation channels without permission from the proper authority and shall provide and maintain navigation lights and signals in accordance with the Federal requirements for the protection of the structure, or false work, and of navigation.

9. Welding, Burning, and Hot-work Regulations

The U. S. Coast Guard requires the JPA to maintain "welding and hot-work" permits valid for 3-year periods that allow the JPA and its Contractors to complete any such work on its marine terminal docks. The area of the terminal covered by this program extends landward from the face of the wharf 150 feet. Beyond 150 feet is covered by rules and regulations of the Jacksonville Fire Marshal's Office, and does not require permitting.

- a. The Contractor must contact the designated JPA terminal representative who will inspect the project area in accordance with, and issue the JAXPORT Cutting-Welding-Hot-work Authorization Form.
- b. Once the JPA representative has issued the Authorization Form, he will give the Contractor a copy of the U. S. Coast Guard permit, which must be posted by the Contractor in the vicinity of the Contractor's project.
- c. After receiving the completed Authorization Form and posting the U. S. Coast Guard permit in the job area, the Contractor must then contact the U. S. Coast Guard Marine Safety Office, Jacksonville, FL, supplying the following information:
 - (1) U. S. Coast Guard Hot-work permit number.
 - (2) The types of hot-work to be accomplished.
 - (3) The exact location of the hot-work at the facility.
 - (4) Anticipated duration of the hot-work.
 - (5) Type and location of any dangerous cargo on the facility.
 - (6) Name/phone number of the point of contact at the facility.
 - (7) The name of the Contractor.
- d. The Marine Safety Office of Jacksonville will issue a reference number allowing the Contractor to use the JAXPORT Welding and Hot-work Permit" for up to a period of 7 days.
- e. Steps a. through d. must be repeated each 7-day period thereafter until the welding and hot-work portions of the contract is complete.

It is the Contractor's responsibility to comply with all federal, state and local laws.

10. Tax Savings Program, General.

Goods and services purchased directly by the Contractor are subject to all State and/or local taxes. All items, materials, supplies and/or equipment incorporated and/or used in the construction of the project and paid for by the Contractor are, consequently, subject to all applicable taxes.

It is the Contractor's sole responsibility to incorporate any and all applicable taxes into the bid proposal including all railroad materials and equipment for this project without regard to the optional purchasing procedures hereinafter defined. JAXPORT is not a Railroad Company or Railroad Operator, therefore the railroad tax exemption rules do not apply to JAXPORT.

JAXPORT Tax Exemption

Chapter 212 of the Florida Statutes, however, provides JAXPORT with an exemption from the payment of sales taxes for all procurements made directly by JAXPORT.

This section contains the specific administrative and/or purchasing procedures that the Contractor shall follow for the purpose of facilitating JAXPORT's procurement of major items to the extent that JAXPORT may so elect and thereby obtain any benefit that may accrue to JAXPORT from the sales tax exemption permitted by the Florida Statutes.

Administrative and/or Purchasing Procedures.

The following procedures are hereby established to permit JAXPORT to purchase in its own name and for its own account some of the items, equipment, materials and supplies which will form part of the work for which the Contractor is obligated to construct under this contract.

Within a period of time that will not adversely impact the orderly progression of the Project, agreed upon by both JAXPORT and Contractor following notice of contract award, the Contractor shall prepare and submit to the Project Manager an itemization of all items, materials, supplies and/or equipment that will be incorporated into this Project for which the Contractor has a firm quotation and as hereinafter specified. If the Contractor does not have a firm quotation for any items at the time the initial list is prepared, the Contractor shall update the previously submitted list immediately upon obtaining the necessary quotation.

This list shall include all items identified on the plans or in the "Products" section of each Technical Specification that individually or collectively cost \$10,000 or more and would normally be ordered from one supplier under a single Purchase Order. Items that are purchased on an "as needed" basis over time under multiple Purchase Orders, each of which are less than \$10,000, may be excluded from this list even though the aggregate total cost of all items in this category exceeds the \$10,000 minimum.

- a) The list must contain the following:
 1. A description of item, material, supplies and/or equipment to be procured. This description shall be by common name and be referenced to the technical specification and CSI code under which it is defined.
 2. The quantity of the item, material, supplies and/or equipment to be procured, the unit cost applicable to each, and the appropriate State of Florida and local (Duval County) sales tax rate in which the procurement is delivered.
- b) Within five (5) working days following receipt of the proposed purchasing list or supplemental firm quotation from the Contractor, the Project Manager will notify Contractor of JAXPORT's decision as to which items will be purchased directly by JAXPORT.

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- c) Purchase Orders for the selected items will be requested from the Purchasing Department using the Contractor's Letter of Quotation to identify the Vendor name, Contractor, and Not to Exceed amount of Purchase Order. Each Purchase Order will be assigned a number based on the project number and sequence number of Purchase Orders issued.

It shall be understood by the Contractor that these Purchase Order Forms will be issued for the sole and specific purpose of procuring the selected items for incorporation in the Work for which the Contractor is obligated to construct under this contract.

- d) Purchase Orders issued with Letter of Quotation attached, will be forwarded by Project Manager to Contractor with request to complete Purchase Order as to item(s) ordered, delivery instructions, and signature of Contractor.

The Purchase Order, however, shall omit any Florida State or local sales tax. In lieu thereof, JAXPORT's Consumer's Certificate of Exemption No. 85-8012543323C-8 shall be attached to the Purchase Order prior to distribution.

Each Purchase Order shall be completed and countersigned by the Contractor. The Contractor shall be responsible for assuring that the requirements for the procurement, as detailed on the plans and in the Technical Specifications, are satisfied.

- e) Contractor will then return the completed Purchase Order(s) to JAXPORT for countersignature by the Project Manager approving purchase as to conformity to specifications; and to the Purchasing Department for countersignature by the Purchasing Manager.
- f) After obtaining all signatures, the Project Manager shall simultaneously distribute the original to the Vendor or supplier with copies to the Purchasing Department, the Contractor, and the Finance Department.
- g) The Contractor and Owner agree that it is to their mutual benefit that prosecution of the Work proceed with due diligence and without interruption. Vendors of selected items shall therefore make deliveries as directed by the Contractor, when needed, to enable the Contractor to perform his scheduled obligations.
- h) JAXPORT and Contractor agree that the Contractor will receive, receipt for, inspect, accept and to the extent necessary, unload, store, and protect the selected items at either the jobsite or other place as the Contractor may deem appropriate until brought to the worksite by the Contractor.

The Contractor shall accept delivery of selected items from the appropriate Vendor as conforming to both the terms and conditions of the Purchase Order and applicable Technical Specifications.

- i) Upon receipt of an invoice for selected items delivered, the Contractor will write on the face of the invoice that it is "okay for payment", sign, and date invoice. The invoice is then submitted to JAXPORT's Project Manager for authorization for payment.

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- j) Upon receipt of a properly approved invoice, JAXPORT shall pay the Vendor of the selected items the amount due as defined by the Purchase Order but without any Florida State or local sales tax.

Where the Contractor has special terms with a Vendor to receive a discount if paid within a 10, 30 days' time and if the invoice is received within that time frame, invoices will be processed and the discount taken of which JAXPORT will receive the benefit. The Contractor will be advised by mail when an invoice is forwarded to the Finance Department for payment and the amount to be paid, showing discounts taken by JAXPORT, if any. Otherwise, invoices will be paid within 30 days from date on invoice.

- k) In preparation of its Monthly Progress Payment request, the Contractor shall show on Line 3 of the Application for Payment the total amount of purchase orders issued under this Tax Savings Program. On Line 4 of the Application for Payment, the Contractor will show the amount of tax savings. Line 5 of the Application is the total of Lines 3 and 4.
- l) An adjustment shall be summarized by reporting at the end of the contract and a Change Order to the contract will be made to close out any remaining balances on purchase orders based on the total of payments against each purchase order made for selected items, plus the total sales tax computed. A final reconciliation change order will be issued on all tax savings purchase orders remaining balances based on payments plus sales tax.
- m) Notwithstanding JAXPORT's payment for selected items, as provided for above, the Contractor assumes full responsibility for any change in price and liability associated with selecting and ordering the proper quantity and type of materials and equipment for scheduling the appropriate delivery date, selection of the appropriate Vendor or supplier, the correctness of the Purchase Order and receipt report and the storage, delivery, and protection of the equipment and/or material.
- n) The Contractor shall use Owner approved Purchase Orders only for purchasing goods, equipment, materials and supplies previously designated or selected by JAXPORT. The Contractor shall immediately notify and consult with JAXPORT relative to any change or modification to any previously approved selected item(s). The Contractor shall account for every Purchase Order including those voided for any reason, and shall return all voided and unused Purchase Order Forms prior to the final contract payment.
- o) If the Contractor enters into one or more subcontracts with respect to any portion of the Work, the Contractor will require that each subcontractor allow, under the terms of their respective subcontracts, JAXPORT to purchase selected item(s) in the same manner as provided above with respect to the Contractor.

The Contractor shall sign all Purchase Orders for selected item(s) required by the subcontractor to complete the portion of the Work required by the subcontract.

FEDERAL REGULATIONS

Secretary of Labor Requirements

11. Davis Bacon Act and Compliance with Copeland Regulations

For this Contract, payment of predetermined minimum wages applies. The U.S. Department of Labor Wage Rates applicable to this Contract are listed in Wage Rate Decision Number(s) **FL140207 hereby incorporated in as ATTACHMENT "A"** in Bid Related Documents. The Wage Rate Bulletin is subject to change up through ten days prior to the opening of bids. An addendum will be issued for any changes to the Wage Rate Bulletin.

Obtain the applicable General Decision(s) (Wage Tables) through the Department's website and ensure that employees receive the minimum wages applicable. Review the General Decisions for all classifications necessary to complete the project. Request additional classifications through the Project Manager's office when needed.

When multiple wage tables are assigned to a Contract, general guidance of their use and examples of construction applicability is available on the Department's website. Contact the Department's Wage Rate Coordinator before bidding if there are still questions concerning the applicability of multiple wage tables.

The URL for obtaining the Wage Rate Decisions is <http://www.dol.gov/compliance/laws/comp-dbra.htm>

Contact the Department's Wage Rate Coordinator at (850) 414-4492 if the Department's website cannot be accessed or there are questions.

The contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- (1) Minimum Wages.
 - (a) All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29CFR Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision(s) of the Secretary of Labor which is (are) attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision(s) shall be posted by the contractor at the site of the work in a prominent place where it (they) can be easily seen by the workers. For the purpose of this

paragraph, section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of subparagraph (4) below. Also for the purpose of this paragraph, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period (29 CFR 5.5 (a) (1) (i)).

- (b) Any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination(s) and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination(s), and a report of the action taken shall be sent by the Jacksonville Port Authority to The Federal Grant Agency for approval and transmittal to the Secretary of Labor. In the event that the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of The Federal Grant Agency shall be referred to the Secretary of Labor for final determination (29 CFR 5.5(a)(1) (ii)).
- (c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question accompanied by the recommendation of The Federal Grant Agency shall be referred to the Secretary of Labor for determination (29 CFR 5.5(a)(1)(iii)).
- (d) If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: Provided, however, the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program (29 CFR 5.5(a)(1)(iv)).

(2) Payrolls and Basic Records.

- (a) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or

costs anticipated of the types described in Section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv) (see subparagraph (d) of paragraph 12. (1) above), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits (29 CFR 5.5(a)(3)(i)).

- (b) The contractor will submit weekly, a copy of all payrolls to the Jacksonville Port Authority for availability to the Federal Grant Agency. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor, under 29 CFR 5.5 (a)(1)(iv) (see subparagraph (d) of paragraph 12. (1) above), shall satisfy this requirement. The prime contractor shall be responsible for submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of Jaxport, the Federal Grant Agency and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the Federal Grant Agency, that their employment is pursuant to an approved program and shall identify the program (29 CFR 5.5(a)(3)(ii)).

(3) Apprentices and Trainees.

- (a) Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship Agency (where appropriate) to be eligible for probationary employment

as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph (b) of this paragraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the Jacksonville Airport Authority or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates) for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination (29 CFR 5.5(a)(4)(i)).

- (b) Trainees: Except as provided in 29 CFR 5.15 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate, not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training, shall be paid no less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the Jacksonville Port Authority or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved (29 CFR 5.5(a)(4)(ii)).
- (c) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this paragraph shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30 (29 CFR 5.5(a)(4)(iii)).
- (d) Application of 29 CFR Part 5.5 (a)(4). On contracts in excess of \$2,000, the employment of all apprentices and trainees as defined in

29 CFR 5.2 (c) shall be subject to the provisions of 29 CFR Part (a)(4) (see paragraph 13. (3), (a), (b) and (c) above).

(e) Enforcement:

- i. The Federal Grant Agency shall promulgate the necessary regulations or procedures, for federally assisted construction programs for which it does not contract directly, necessary to ensure that contracts contain the provisions herein or such modifications thereof which have been approved by the Department of Labor. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal Grant Agency after the beginning of construction unless there is on file with the Federal Grant Agency a certification by the contractor that he and his subcontractors have complied or that there is substantial dispute with respect to the required provisions (29 CFR 5.6(a)(1)).
- ii. Enforcement activities, including the investigation of complaints of violations, to insure compliance with the requirements of these provisions shall be the primary duty of the Federal Grant Agency. The Department of Labor will coordinate its efforts with the Federal Grant Agency, as may be necessary to ensure consistent enforcement of the requirements of these provisions. Enforcement of these provisions shall be in accordance with 29 CFR 56.

- (4) Compliance with Copeland Regulations. The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference (29 CFR 5.5(a)(5)).
- (5) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic received compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (6) Violations, Liability for Unpaid Wages, Liquidated Damages. In the event of any violation of paragraph 12. (5) of this provision, the contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of said paragraph 12. (5) of this provision, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by said paragraph 13. (5) of this provision (29 CFR 5.5(c)(2)).

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- (7) Withholding for Unpaid Wages and Liquidated Damages. The Federal Grant Agency may withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph 12. (6) of this provision (29 CFR 5.5(c)(3)).
 - (8) Working Conditions. No contractor may require any laborer or mechanic employed in the performance of any contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards (29 CFR Part 1926) and other occupational and health standards (29 CFR Part 1910) issued by the Department of Labor.
 - (9) Subcontractors. The contractor will insert in each of his subcontracts the clauses contained in paragraphs 12. (1) through 12. (10) of this provision, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made (29 CFR 5.5(a)(6), 5.5(c)(4)).
 - (10) Contract Termination; Debarment. A breach of clause 12. (1), 12. (2), 12. (3), 12. (4), or 12. (9) may be grounds for termination of the contract, and for debarment as provided in paragraph 5.6 of the Regulations of the Secretary of Labor as codified in 29 CFR 5.6 (29 CFR 5.5(a)(7)).

12. Equal Employment Opportunity Clause.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers

with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided, advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) The contractor will comply with all provisions of Executive Order 11246 or September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph 13. (1) and the provisions of paragraphs 13. (1) through 13. (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

13. Health and Safety Requirements.

- (1) It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or

safety, as determined under Construction Safety and Health Standard Title 29 Code of Federal Regulations, Part 1518 36 F.R. 7340 promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, 83 STAT. 96.

14. Air and Water Quality Standards.

- (1) Any other provision herein to the contrary notwithstanding, the contractor in carrying out work under this contract, shall at all times comply with all applicable state and federal air and water quality standards; with all pollution control laws; and with such rules, regulations, and directives as may be lawfully issued by a local, state, or federal agency having within its jurisdiction the protection of the environment in the area surrounding where work under this contract will be performed. In addition, the contractor shall comply with directives given by the Project Engineer in implementation of the letter and intent of FAA Advisory Circulars, which can be obtained free of charge from Department of Transportation, Distribution Unit, TAD-484.3, Washington, D.C. 20590.
- (2) Contractors and subcontractors agree:
 - (a) That any facility to be used in the performance of the contract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities.
 - (b) To comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal water Pollution Control Act and all regulations issued thereunder.
 - (c) That as a condition for award of the contract he will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be utilized for performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities.
 - (d) To include or cause to be included in any contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

15. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246, as amended).

- (1) As used in these specifications:
 - (a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - (b) "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;

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- (c) "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- (d) "Minority" includes:
- Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish culture or origin regardless of race);
 - Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast, Asia, the Indian Subcontinent, or the Pacific Islands); and
 - American Indian or Alaskan native (all persons having origin in any of the original peoples of the Far East, Southeast, Asia, the Indian Subcontinent, or the Pacific Islands); and
- (2) Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provision of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- (3) If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any efforts to achieve the plan goals and timetables.
- (4) The contractor shall implement the specific affirmative action standards provided in 16. paragraph (7)(a) through (p) of these specifications. The goals set forth in the solicitation from

which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization; the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The contractor is expected to have made substantially uniform progress towards its goals in each craft during the period specified.

- (5) Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order I1246, as amended, or the regulations promulgated pursuant thereto.
- (6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (7) The contractor shall take specific affirmative actions to ensure EEO. The evaluation of the contractor's compliance with these Specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:
 - (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - (c) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or

community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore along with whatever additional actions the contractor may have taken.

- (d) Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
- (e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under (7)(b) above.
- (f) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (h) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the subcontractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

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- (i) Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students; and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than 1 month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations, such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's operations.
 - (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - (i) Conduct, at least annually, an inventory and evaluation, at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - (m) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
 - (n) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (p) Conduct a review, at least annually, of all supervisor's adherence to and performance under the contractor's EEO policies and affirmative action obligations.
- (8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7)(a) through (p). The efforts of a

contractor association, joint contractor-union, contractor-community, or other similar groups of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7)(a) through (p) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority participation to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

- (9) A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide EEO and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the executive order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the executive order if a specific minority group of women is under-utilized).
- (10) The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (11) The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246, as amended.
- (12) The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- (13) The contractor, in fulfilling its obligation under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the executive order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 DFR 60-4.8.

(14) The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. CONTRACTOR PURCHASED EQUIPMENT FOR STATE OR LOCAL OWNERSHIP

The OWNER does not allow.

17. BUY AMERICA AND FOREIGN CONTRACTOR AND SUPPLIER RESTRICTION

Source of Supply - Steel (Federal-aid Highway Construction Contracts Only): For Federal-aid Highway Construction Contracts, only use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. Ensure that all manufacturing processes for this material occur in the United States. As used in this specification, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product beginning with the initial melting and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. When using steel and iron as a component of any manufactured product incorporated into the project (e.g., concrete pipe, pres-stressed beams, corrugated steel pipe, etc.), these same provisions apply, except that the manufacturer may use minimal quantities of foreign steel and iron when the cost of such foreign materials does not exceed 0.1% of the total Contract amount or \$2,500, whichever is greater. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that the Contractor uses but does not incorporate into the finished work. Provide a certification from the producer of steel or iron, or any product containing steel or iron as a

component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended. Such certification shall also include (1) a statement that the product was produced entirely within the United States, or (2) a statement that the product was produced within the United States except for minimal quantities of foreign steel and iron valued at \$(actual value). Furnish each such certification to the Engineer prior to incorporating the material into the project. When the Agency allows the use of foreign steel on a project, furnish invoices to document the cost of such material, and obtain the Engineer's written approval prior to incorporating the material into the project.